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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DERRICK SATCHELL, KALINI
BOYKIN, VALERIE BROWN, RICK
GONZALES, CYNTHIA GUERRERO,
RACHEL HUTCHINS, TYRONE
MERRITT, KELVIN SMITH, SR., and
KEN STEVENSON, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

FEDEX EXPRESS, a Delaware
corporation,

Defendant.

Case No. C 03-2659 SI; C 03-2878 SI

CLASS ACTION

**SECOND CONSOLIDATED AMENDED
COMPLAINT FOR VIOLATIONS OF
TITLE VII OF THE CIVIL RIGHTS ACT
OF 1964; 42 U.S.C. § 1981; CALIFORNIA
FAIR EMPLOYMENT AND HOUSING
ACT**

JURY TRIAL DEMANDED

INTRODUCTION

Individual and representative Plaintiffs Derrick Satchell (“Satchell”), Kalini Boykin (“Boykin”), Valerie Brown (“Brown”), Rick Gonzales (“Gonzales”), Cynthia Guerrero (“Guerrero”), Rachel Hutchins (“Hutchins”), Tyrone Merritt (“Merritt”), Kelvin Smith, Sr. (“Smith”), and Ken Stevenson (“Stevenson”) (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, allege as follows:

PRELIMINARY STATEMENT

1. This race discrimination class action is brought on behalf of two classes of African American and Latino (“Minority”) employees of defendant FedEx Express. One class consists of all African-American and Latino Handlers, Freight Handlers, Material Handlers, Checker/Sorters, Customer Service Agents, Couriers, Swing Drivers, Ramp Transport Drivers, Ramp Area Drivers, Shuttle Drivers, Dangerous Goods Agents, Information Agents, Operations Agents, Ramp Agents, Service Assurance Agents, Truck Control Agents, Trace Representatives, Input Auditors, Team Leaders, and Dispatchers working in FedEx’s Western Region, which includes the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during the period October 17, 1999 through the date of judgment in this action (“Minority Employee Class”). The second class consists of all African-American Operations Managers in FedEx’s Western Region, which includes the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during the period October 17, 1999 through the date of judgment in this action (“African American Lower-Level Manager Class”).

2. Representative Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, and Stevenson allege on behalf of themselves and the Minority Employee Class that FedEx Express engages in a continuing policy and practice of racial discrimination through the use of subjective and arbitrary decision making against its African American and Latino hourly employees in the Western Region by (1) disproportionately assigning Minority Employees to part-time and casual positions, instead of to the full-time and permanent hourly positions to which

1 similarly situated non-Minority employees are sometimes initially assigned; (2) providing
2 Minority Employees with fewer promotions to full-time and permanent hourly positions than
3 provided to similarly situated non-Minority employees; (3) providing Minority Employees with
4 fewer promotions to management positions than provided to similarly situated non-Minority
5 employees; (4) providing Minority Employees with less compensation, including less pay for the
6 same work and less overtime, than provided to similarly situated non-Minority employees; and
7 (5) disciplining Minority Employees for petty matters and/or for infractions unsupported or
8 contradicted by credible evidence, for which similarly situated non-Minority employees are not
9 disciplined or are disciplined less harshly.

23 4. This action seeks an end to these discriminatory practices, and seeks
24 declaratory and injunctive relief, including rightful place relief, back pay, front pay, and
25 compensatory and punitive damages for the individual Plaintiffs and members of the two classes.

JURISDICTION AND VENUE

27 5. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and
28 42 U.S.C. §§ 2000e-5(f)(3) and 42 U.S.C. § 1981. The action presents federal questions under

1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended, and 42 U.S.C.
2 § 1981. Pursuant to 28 U.S.C. § 1337, this Court has supplemental jurisdiction over plaintiffs'
3 claims under the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12940, *et*
4 *seq.*

5 6. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and
6 28 U.S.C. § 1391 (b) & (c). All the named Plaintiffs' claims, except for those of Plaintiff Merritt,
7 arose in California, and many of the acts complained of herein occurred in this District and gave
8 rise to the claims alleged. Defendant operates over 100 facilities in California and employs
9 thousands of workers in the State of California. Defendant operates at least 10 facilities in the
10 Northern District of California.

THE PARTIES

12 7. Plaintiff Derrick Satchell is an African American formerly employed by
13 Defendant FedEx Express as a Courier Operations Manager at its distribution facility located at
14 335 Brokaw Road, Santa Clara, California (the “Santa Clara Facility”). Plaintiff Satchell was
15 employed by Defendant from approximately June 1992 until April 16, 2002. Plaintiff Satchell is
16 a resident of Tracy, California.

17 8. Plaintiff Kalini Boykin is an African American currently employed by
18 Defendant as a Ramp Transport Driver (“RTD”) Operations Manager, most recently at its
19 operations facility located at 1254 Davis Street, San Leandro, California (the “San Leandro
20 Facility”). Plaintiff Boykin has been employed by Defendant in several capacities since
21 approximately May 1995. Plaintiff Boykin is a resident of Sacramento, California.

22 9. Plaintiff Valerie Brown is an African American currently employed by
23 Defendant as a part-time Customer Service Agent at 935 Performance Dr., Stockton, California
24 (the “Stockton Facility”). Plaintiff Brown has been employed by defendant FedEx Express at
25 several of its facilities and in several capacities since approximately 1982. Plaintiff Brown is a
26 resident of Tracy, California.

27 10. Plaintiff Rick Gonzales is a Latino formerly employed by Defendant
28 FedEx Express as a Courier at Defendant's facility located at 9339 Ann Street, Santa Fe Springs.

1 California (the “Santa Fe Springs Facility”). Plaintiff Gonzales was employed by Defendant from
 2 approximately May 1988 until September 2002. Plaintiff Gonzales is a resident of Temecula,
 3 California. Plaintiffs are informed and believe, and thereon allege, that Plaintiff is eligible for
 4 rehire.

5 11. Plaintiff Cynthia Guerrero is a Latina formerly employed by Defendant
 6 FedEx Express as a Courier at Defendant’s Santa Fe Springs Facility. Plaintiff Guerrero was
 7 employed by Defendant from approximately 1995 to July 2004. Plaintiff Guerrero currently
 8 resides in Topeka, Kansas. Plaintiffs are informed and believe, and thereon allege, that Plaintiff
 9 is eligible for rehire.

10 12. Plaintiff Rachel Hutchins is an African American formerly employed by
 11 Defendant FedEx Express as a part-time, casual Handler at Defendant’s facility located at 2103
 12 Airport Drive, Bakersfield, California (the “Bakersfield Facility”). Plaintiff Hutchins was
 13 employed by Defendant from approximately December 1995 through April 1996, and from
 14 March 2001 through January 2004. Plaintiff Hutchins is a resident of Bakersfield, California.
 15 Plaintiffs are informed and believe, and thereon allege, that Plaintiff is eligible for rehire.

16 13. Plaintiff Tyrone Merritt is an African American currently employed by
 17 Defendant FedEx Express as a Field Facility Management Specialist, domiciled at Defendant’s
 18 facility in New Orleans, Louisiana. From the fall of 2001 to July 2005, he worked as a permanent
 19 part-time Handler at Defendant’s facility located at 3002 E. Old Tower Rd., Phoenix, Arizona
 20 (the “Phoenix Facility”). Plaintiff Merritt has been employed by Defendant since approximately
 21 September 1998. Plaintiff Merritt is currently a resident of Memphis, Tennessee, where he is
 22 attending training.

23 14. Plaintiff Kelvin Smith is an African American formerly employed by
 24 Defendant FedEx Express as a part-time Lead Handler at Defendant’s Santa Clara Facility.
 25 Plaintiff Smith was employed by Defendant from approximately November 1989 to July 2002.
 26 Plaintiff Smith is a resident of Apple Valley, California.

27 15. Plaintiff Ken Stevenson is an African American currently employed by
 28 Defendant FedEx Express as an Operations Manager at Defendant’s facility located at 201 W.

1 Manville St., Compton, California (the “Compton Facility”). Plaintiff Stevenson has been
2 employed by Defendant in various positions since approximately May 1997. Plaintiff Stevenson
3 is a resident of Long Beach, California.

4 16. Defendant FedEx Express is, and at all times mentioned herein was, a
5 Delaware corporation operating express mail and package delivery and freight delivery services
6 in the San Francisco Bay Area, as well as throughout the State of California and the United
7 States. FedEx Express operates facilities, among other places, in Bakersfield, Emeryville,
8 Milpitas, Oakland, San Francisco, San Jose, San Leandro, Santa Clara, Santa Fe Springs, and
9 Sunnyvale, California.

CLASS ALLEGATIONS

11 17. The Representative Plaintiffs bring this class action pursuant to Fed. R.
12 Civ. P. 23(a), (b)(2), and (b)(3), on behalf of: (1) a “Minority Employee Class” comprising all
13 African-American and Latino Handlers, Freight Handlers, Material Handlers, Checker/Sorters,
14 Customer Service Agents, Couriers, Swing Drivers, Ramp Transport Drivers, Ramp Area
15 Drivers, Shuttle Drivers, Dangerous Goods Agents, Information Agents, Operations Agents,
16 Ramp Agents, Service Assurance Agents, Truck Control Agents, Trace Representatives, Input
17 Auditors, Team Leaders, and Dispatchers working in FedEx’s Western Region, which includes
18 the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New
19 Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during the period October 17,
20 1999 through the date of judgment in this action; and (2) an “African American Lower-Level
21 Manager Class” comprising all African-American Operations Managers in FedEx’s Western
22 Region, which includes the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho,
23 Montana, Nevada, New Mexico, Oregon, part of Texas, Utah, Washington, and Wyoming, during
24 the period October 17, 1999 through the date of judgment in this action.

A. Employee Class

26 18. Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, and
27 Stevenson are members of, and seek to represent, the Minority Employees Class.

28 19. The members of the Minority Employee Class identified herein are so

1 numerous that joinder of all members is impracticable. By the end of 2003, FedEx Express had
 2 many tens of thousands of employees. Although the precise number of Minority Employees
 3 affected by the discriminatory practices alleged herein is currently unknown, it is far greater than
 4 can be feasibly addressed through joinder. The precise number is ascertainable from Defendant's
 5 records.

6 20. There are many questions of law and fact common to the Minority
 7 Employee Class, and these questions predominate over any questions affecting only individual
 8 members. Common questions of fact or law include, among others: (1) whether FedEx Express'
 9 policies or practices have a disparate impact on Minority Employees with respect to (a) initial job
 10 assignment, (b) compensation, (c) promotion, and (d) discipline; (2) whether any disparate impact
 11 is justified by business necessity; (3) whether the disparate impact constitutes a violation of
 12 Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq.; (4) whether FedEx Express has
 13 intentionally discriminated against Minority Employees with respect to (a) initial job assignment,
 14 (b) compensation, (c) promotion, and (d) discipline; (5) whether FedEx Express has engaged in a
 15 pattern and practice of disparate treatment adverse to Minority Employees; (6) whether that
 16 disparate treatment violates Title VII of the 1964 Civil Rights Act; (7) whether defendant's
 17 intentional discrimination against Minority Employees violates 42 U.S.C. § 1981; (8) whether
 18 FedEx Express' policies or practices violate Section 12940, *et seq.*, of the California Government
 19 Code, known as the Fair Employment and Housing Act ("FEHA"), as to Minority Employees
 20 who have been employed or reside in California; and (9) whether injunctive relief and other
 21 equitable remedies (including back pay and front pay) and compensatory and punitive damages
 22 are warranted for the Minority Employee Class.

23 21. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
 24 because FedEx Express has acted and/or refused to act on grounds generally applicable to the
 25 Minority Employee Class, making appropriate declaratory and injunctive relief with respect to
 26 Plaintiffs Brown, Gonzales, Guerrero, Hutchins, Merritt, Smith, and Stevenson and the Minority
 27 Employee Class as a whole. The members of the Minority Employee Class are entitled to
 28 injunctive relief to end FedEx Express' common, uniform, and unfair racially discriminatory

1 personnel policies and practices.

2 22. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
 3 because common questions of fact and law predominate over any questions affecting only
 4 individual members of the Minority Employee Class, and because a class action is superior to
 5 other available methods for the fair and efficient adjudication of this litigation. The members of
 6 Minority Employee Class have been damaged and are entitled to recovery as a result of FedEx
 7 Express' common, uniform, and unfair racially discriminatory personnel policies and practices.
 8 FedEx Express has computerized payroll and personnel data that will make calculation of
 9 damages for specific members of the Minority Employee Class relatively simple.

10 B. **African American Lower-Level Manager Class**

11 23. Plaintiffs Satchell and Boykin are members of, and seek to represent, the
 12 African American Lower-Level Manager Class.

13 24. The members of the African American Lower-Level Manager Class
 14 identified herein are so numerous that joinder of all members is impracticable. By the end of
 15 2003, FedEx Express had many tens of thousands of employees. Although the precise number of
 16 African American Lower-Level Managers affected by the discriminatory practices alleged herein
 17 is currently unknown, it is far greater than can be feasibly addressed through joinder. The precise
 18 number is ascertainable from Defendant's records.

19 25. There are many questions of law and fact common to the African American
 20 Lower-Level Manager Class, and these questions predominate over any questions affecting only
 21 individual members. Common questions of fact or law include, among others: (1) whether
 22 FedEx Express' policies or practices have a disparate impact on African American Lower-Level
 23 Managers with respect to (a) compensation, (b) promotion to senior management, and
 24 (c) discipline; (2) whether any disparate impact is justified by business necessity; (3) whether the
 25 disparate impact constitutes a violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C.
 26 § 2000e et seq.; (4) whether FedEx Express has intentionally discriminated against African
 27 American Lower-Level Managers with respect to (a) compensation, (b) promotion to senior
 28 management, and (c) discipline; (5) whether FedEx Express has engaged in a pattern and practice

1 of disparate treatment adverse to African American Lower-Level Managers; (6) whether that
 2 disparate treatment violates Title VII of the 1964 Civil Rights Act; (7) whether defendant's
 3 intentional discrimination against African American Lower-Level Managers violates 42 U.S.C.
 4 § 1981; (8) whether, as to African American Lower-Level Managers who have been employed or
 5 reside in California, FedEx Express' policies or practices violate Section 12940, *et seq.*, of the
 6 California Government Code, known as the Fair Employment and Housing Act ("FEHA"); and
 7 (9) whether injunctive relief and other equitable remedies (including back pay and front pay) and
 8 compensatory and punitive damages are warranted for the African American Lower-Level
 9 Manager Class.

10 26. The claims of Representative Plaintiffs Satchell and Boykin are typical of
 11 the claims of the African American Lower-Level Manager Class.

12 27. Representative Plaintiffs Satchell and Boykin will fairly and adequately
 13 represent and protect the interests of the members of the African American Lower-Level Manager
 14 Class. Plaintiffs have retained counsel competent and experienced in complex class actions and
 15 employment discrimination litigation.

16 28. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
 17 because FedEx Express has acted and/or refused to act on grounds generally applicable to the
 18 African American Lower-Level Manager Class, making appropriate declaratory and injunctive
 19 relief with respect to Plaintiffs Satchell and Boykin and the African American Lower-Level
 20 Manager Class as a whole. The members of the African American Lower-Level Manager Class
 21 are entitled to injunctive relief to end FedEx Express' common, uniform, and unfair racially
 22 discriminatory personnel policies and practices.

23 29. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
 24 because common questions of fact and law predominate over any questions affecting only
 25 individual members of the African American Lower-Level Manager Class, and because a class
 26 action is superior to other available methods for the fair and efficient adjudication of this
 27 litigation. The members of the African American Lower-Level Manager Class have been
 28 damaged and are entitled to recovery as a result of FedEx Express' common, uniform, and unfair

1 racially discriminatory personnel policies and practices. FedEx Express has computerized payroll
 2 and personnel data that will make calculation of damages for specific members of the African
 3 American Lower-Level Manager Class relatively simple.

4 **STATEMENT OF FACTS APPLICABLE TO ALL CLAIMS**

5 **A. FedEx Express' Discriminatory Policies and Practices**

6 30. Defendant FedEx Express engages in a pattern and practice of highly
 7 subjective decision making regarding employment matters that is discriminatory to Minority
 8 Employees and African American Lower-Level Managers and is manifested in initial assignments
 9 (as to Minority Employees only), promotions, compensation, and discipline. While Defendant
 10 has policies designed to govern these matters, many of these policies involve uncontrolled
 11 subjective criteria and/or are applied by Defendant in an arbitrary and capricious manner. As a
 12 result, racial biases and stereotypes enter into Defendant's employment decisions.

13 31. Defendant's system of subjective and arbitrary decision making has an
 14 adverse impact on Minority Employees and African American Lower-Level Managers relative to
 15 their non-Minority peers with respect to (a) initial job assignment (as to Minority Employees
 16 only); (b) promotion to permanent and full-time positions and to management; (c) compensation;
 17 and (d) discipline. This impact is not justified by business necessity. Even if it could be so
 18 justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

19 32. Defendant also engages in intentional discrimination against Minority
 20 Employees and African American Lower-Level Managers with respect to (a) initial job
 21 assignment (as to Minority Employees only); (b) promotion to permanent and full-time positions
 22 and to management; (c) compensation; and (d) discipline through its system of subjective and
 23 arbitrary decision making, as demonstrated by anecdotal and statistical evidence.

24 33. Defendant has discriminated against Minority Employees by use of a dual-
 25 employment track. For example, both full-time and part-time employees fill Handler positions at
 26 a facility. The full-time positions are more lucrative and provide employees with more
 27 opportunities for advancement, greater job security, and greater pay and benefits. By contrast, the
 28 part-time positions are less desirable because they offer lower wages, lesser benefits, changing

1 and inconsistent work hours, proportionately heavier responsibilities, and more difficult work
 2 conditions. Defendant has a systematic pattern and practice of relegating qualified Minority
 3 Employees to part-time jobs, with lesser job security, compensation, and opportunity for
 4 advancement. Defendant typically reserves the full-time, permanent, higher wage positions for
 5 non-Minority employees. Consistent with Defendant's long-standing discriminatory policies and
 6 practices, Defendant typically hires Minority Employees only for entry level, part-time, and
 7 casual positions.

8 34. Defendant also disproportionately fails to promote qualified Minority
 9 Employees from part-time, casual positions to full-time and permanent positions at the same rate
 10 as their similarly situated non-Minority counterparts. Even when FedEx Express does promote
 11 Minority Employees from part-time, casual positions to full-time, permanent positions, it does not
 12 promote them as quickly as their similarly situated non-Minority counterparts. To be promoted
 13 from Handler or other low level hourly positions into Courier, Ramp Transport Driver, or Service
 14 Agent positions, a FedEx employee must pass a group of tests known as the Basic Skills Tests
 15 ("BST"), which FedEx knows has statistically significant adverse impact on minorities, and
 16 which has not been validated. The BST requirement applies uniformly to all Service Agent,
 17 Courier, and Ramp Transport Driver candidates in the Western Region. FedEx also uses uniform
 18 performance evaluations that have adverse impact and have not been validated, and that are the
 19 basis for promotion and compensation decisions under FedEx policy.

20 35. Virtually all Minority Employees of Defendant FedEx Express occupy
 21 entry level, hourly positions. FedEx Express disproportionately fails to promote qualified
 22 Minority Employees to lower management positions such as Operations Manager, and instead
 23 disproportionately promotes similarly situated or less qualified non-Minority employees to those
 24 positions.

25 36. The few Minority Employees who are able to break into the management
 26 ranks are usually promoted by a small handful of Minority managers. These Minority managers,
 27 however, are themselves often subjected to discriminatory practices that minimize their
 28 opportunities for further advancement. Such practices include, for example, exclusion of

1 Minority managers from “informal” email buddy lists and social gatherings that are used to
 2 communicate relevant operating procedures, discuss managerial issues, and post corporate
 3 advancement opportunities.

4 37. FedEx Express disproportionately fails to promote the few qualified
 5 African American Lower-Level Managers to Senior Manager positions, and instead
 6 disproportionately promotes similarly situated, or less qualified, non-Minority Operations
 7 Managers or other non-Minority Lower-Level Managers to Senior Manager positions. Even
 8 when African American Lower-Level Managers are promoted to Senior Manager positions, they
 9 are promoted less quickly than similarly situated, or less qualified, non-Minorities.

10 38. Plaintiffs are informed and believe that Minority Employees and African
 11 American Lower-Level Managers are paid less than non-Minority employees who perform
 12 substantially similar work and have similar or lesser skills and experience. Plaintiffs are further
 13 informed and believe that non-Minority employees are more likely to be assigned to positions that
 14 pay better than positions to which Minority Employees are assigned.

15 39. Plaintiffs are informed and believe that this discrimination in compensation
 16 takes on several forms: requiring Minority Employees and African American Lower-Level
 17 Managers to perform the job duties of higher positions without a commensurate change in their
 18 title or increase in pay; paying Minority Employees and African American Lower-Level
 19 Managers less than non-Minority employees with the same job title and job duties; providing
 20 Minority Employees with fewer desired overtime hours than non-Minority employees with equal
 21 or less seniority; and not paying Minority Employees the guaranteed minimum pay.¹

22 40. Defendant has also engaged in a longstanding, widespread and
 23 discriminatory policy and practice of applying differential standards in determining whether to
 24 subject an employee to disciplinary action. Minority Employees and African American Lower-
 25 Level Managers are consistently reprimanded and disciplined for petty matters, and are
 26 disciplined for infractions unsupported or contradicted by credible evidence. Non-Minority

27 ¹ Defendant guarantees its part-time employees a minimum of 17½ hours to which they are entitled even if the
 28 company does not have sufficient work to be performed. The number of hours out of the guaranteed minimum of
 hours which an employee did not actually work are called “excess” minimum hours.

1 Employees are not reprimanded or disciplined for similar matters, or for infractions which are not
 2 supported by credible evidence.

3 41. Defendant routinely terminates Minority Employees and African American
 4 Lower-Level Managers who receive three forms of written discipline within a 12-month period,
 5 even if some of the three are documented counselings or Online Compliment/Counselings
 6 (“OLCC”)², rather than formal warning letters. By contrast, Defendant does not automatically
 7 terminate non-Minority employees and managers who are disciplined three times in a 12-month
 8 period. Where non-Minorities have received three disciplinary actions in a 12-month period,
 9 Defendant has allowed the non-Minority employee to continue his or her employment, has
 10 transferred the employee, or has demoted the employee.

11 42. Defendant has condoned the discriminatory conduct of its managers by
 12 failing to properly investigate formal complaints regarding discrimination, and by promoting
 13 managers who engage in acts of discrimination or transferring them to other locations despite
 14 repeated complaints (and in some cases, previous discrimination lawsuits) by Plaintiffs and other
 15 Minority Employees and African American Lower-Level Managers.

16 43. This pattern of denying Minority Employees and African American Lower-
 17 Level Managers equal assignments, promotions, training, and compensation and of over-
 18 disciplining Minority Employees and African American Lower-Level Managers, is not the result
 19 of random or non-discriminatory factors. Rather, it is the result of an ongoing and continuous
 20 pattern and practice of intentional race discrimination in assignments, compensation, promotions,
 21 and discipline. It is further the result of reliance on policies and practices that have an adverse
 22 impact on Minority Employees which cannot be justified by business necessity, and for which
 23 alternative policies and practices with less discriminatory impact could be utilized that would
 24 equally serve any asserted business necessity. Plaintiffs are informed and believe that such
 25 policies and practices continue up to and including the present and include, without limitation:

26 (a) Failure to consistently post job and promotional openings to ensure
 27

28 ² OLCCs are verbal warnings accompanied by a notation in a company employee database that both employee and
 manager acknowledge in writing.

that all Minority Employees and African American Lower-Level Managers have notice of and opportunity to seek advancement, higher compensation, overtime, or more desirable assignments and training;

(b) Reliance upon unweighted, arbitrary and subjective criteria (used by a nearly all-non-Minority managerial workforce) in making job assignment, training, performance review, compensation, promotion, and discipline decisions. Even where FedEx policies state objective requirements, these requirements are often applied in an inconsistent manner and ignored at the discretion of management;

(c) Reliance on racial stereotypes in making employment decisions involving job assignments, promotions, compensation, discipline and training;

(d) Pre-selection and “grooming” of non-Minority employees for promotion, favorable assignments, higher pay, and more desirable positions;

(e) Maintenance of largely racially-segregated job categories and departments;

(f) Deterrence and discouragement of Minority Employees and African American Lower-Level Managers from seeking advancement, training, favorable assignments and higher paid, more desirable positions;

(g) Paying Minority Employees and African American Lower-Level Managers lower compensation than similarly situated non-Minorities;

(h) Assigning Minority Employees to lower paying positions and positions with lesser advancement potential than those given to non-Minorities (including part-time and casual positions), and advancing Minority Employees more slowly from these positions than similarly situated non-Minority employees;

(i) Providing less training and support to Minority Employees and African American Lower-Level Managers than that given to non-Minority employees and managers; and

(j) Using employment tests (such as the BST) and performance evaluations that have adverse impact and have not been validated, and failing to explore

1 alternative, non-discriminatory options.

2 44. As a proximate result of the racially discriminatory employment practices
 3 and other wrongful acts alleged herein, Plaintiffs and members of both classes have suffered loss
 4 of income, loss of advancement and promotion, loss of career opportunity, and/or loss of
 5 intangible job benefits. As a proximate result of the racially discriminatory employment policies,
 6 practices and other wrongful acts alleged herein, Plaintiffs and members of both classes have
 7 experienced pain, suffering, severe emotional and mental distress, shame, humiliation,
 8 embarrassment, and related physical ailments.

9 45. Plaintiffs, and each of them, have experienced such racially discriminatory
 10 employment practices and other racially discriminatory actions by Defendant including, without
 11 limitation, the practices and actions described herein.

12 B. **FedEx Express' Operations**

13 46. The Plaintiffs to this action are, or have been, employed by Defendant
 14 FedEx Express in its Western Region.

15 47. Defendant FedEx Express' Western Region includes the following states:
 16 Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon,
 17 part of Texas, Utah, Washington, and Wyoming.

18 48. Defendant employs uniform employment and personnel policies
 19 throughout all its districts, regions, and/or divisions in the Western Region. Regardless of facility
 20 or corporate division, there are uniform policies for employees, uniform "orientation" procedures,
 21 and uniform salary, assignment, pay, training, promotion, and disciplinary policies. All facilities
 22 must follow these uniform, company-wide policies and procedures.

23 49. Defendant operates numerous warehouse distribution centers in California
 24 and the United States. Distribution facilities are standardized and comprised of a large warehouse
 25 to which packages are delivered, sorted, stored for later delivery or pick-up, and shipped.

26 50. Defendant operates several shifts at its major distribution facilities, during
 27 which packages arrive and depart the warehouse. Many thousands of packages may be handled
 28 and sorted on the Line (the conveyor belt used to move packages inside a station) per hour during

1 a shift at a mid- to large-sized facility. An individual package may weigh anywhere from a few
 2 ounces to 75 pounds. Crates may weigh up to 200 pounds.

3 51. Defendant employs numerous Handlers to lift, sort, scan and stack
 4 packages in buckets, cans and delivery vehicles. In addition, several of the Handlers are
 5 designated as “Lead” and are responsible for the coordination and efficient operation of other
 6 Handlers in processing packages along a particular part of the Line.

7 52. In addition to Handlers, Defendant employs Checker/Sorters, who scan and
 8 direct packages; Couriers and Swing Drivers, who operate the delivery vehicles and deliver and
 9 pickup packages from customers; Shuttle Drivers, who drive shuttles or large tractor trucks to
 10 pick up significant numbers of packages from institutional customers and to make trips to the
 11 airport and other distribution facilities; Customer Service Agents, who interact with the public
 12 and handle customer pickups and complaints; Dispatchers, who communicate with Couriers;
 13 Operations Managers, who supervise the various workgroups or job classes in the Facility during
 14 a shift; and Freight Handlers, Material Handlers, Ramp Agents, Ramp Area Drivers, and Ramp
 15 Transport Drivers to load and unload packages and heavy freight, to transfer the cargo to and
 16 from the cargo airplanes to the onsite facility for sorting or storage, and to transfer the cargo to
 17 and from the large freight vehicles or smaller shuttles that transport the packages to the various
 18 distribution facilities in the area, or to their ultimate destinations. FedEx also employs Dangerous
 19 Goods Agents, Information Agents, Operations Agents, Service Assurance Agents, Truck Control
 20 Agents, Trace Representatives, Input Auditors, and Team Leaders to assist with and coordinate
 21 these operations.

22 53. The Regions for Defendant FedEx Express are headed by Vice Presidents
 23 of Operations. The Districts for FedEx Express are headed by District Managers who report
 24 directly to the Vice Presidents of Operations. The Districts are comprised of individual
 25 distribution/service centers in the Domestic Ground Operations (“DGO”) division, and of
 26 “organizations” in Air Ground Freight Services (“AGFS”) division, which may correspond to a
 27 single facility or to set of operations within a larger airport based facility. Both service centers
 28 and organizations are run by Senior Managers, who report directly to the Managing Directors.

Senior Managers supervise Operations Managers, the lowest management positions.

54. The Vice President of Operations, the District Managers and Senior Managers form the senior management ranks in a region. The various operations managers at each facility form the lower management ranks.

55. Defendant has limited the senior and lower management ranks primarily to non-Minorities in the Western Region. Defendant principally promotes from within and maintains a work force with significant numbers of Minority Employees in lower level jobs. Defendant, however, employs only a sparse number of Minorities in its management ranks. Plaintiffs are informed and believe, and based thereon allege, that Defendant has never employed a Minority as a Vice President of Operations in the Western Region. Plaintiffs are informed and believe that even when Minority Employees are promoted, on average they are advanced later, and then more slowly, than similarly situated non-Minority employees.

56. As a result of the scarcity of Minority managers in management positions in the Western Region, the managerial ranks within the District are commonly known as the “Ole Boys Network” or the “Country Club.” Racial epithets have often been used by Defendant’s Senior Managers.

57. The racial composition of Defendant's workforce with respect to its senior and lower management ranks is grossly disproportionate to the available pool of Minority workers who are qualified for positions in the senior and lower management ranks of Defendant's business.

ALLEGATIONS OF NAMED PLAINTIFFS

I. MINORITY EMPLOYEE CLASS

Valerie Brown

A. Class Claims

58. Plaintiff Brown was hired by Defendant in approximately 1982 as a Customer Service Agent at the distribution facility in Sunnyvale Facility and transferred to the Milpitas Facility in approximately 1987 upon closure of the former facility. In approximately 1989, Defendant employed Plaintiff Brown as the sole African American Courier at the Milpitas

1 Facility.

2 59. In 2003, Defendant gave Plaintiff Brown written, disciplinary notations
 3 regarding issues for which non-Minority Couriers were not criticized, negatively affecting her
 4 performance reviews and promotability. For example, Plaintiff Brown was reprimanded for
 5 calling in sick and not speaking directly with a manager, whereas non-Minority employees were
 6 not disciplined when they called in sick and left messages for their managers with hourly
 7 employees. Plaintiff Brown was disciplined despite the objection of her direct supervisor.

8 60. Similarly, in July 2003, Plaintiff Brown was disciplined for a customer
 9 complaint without having had an opportunity to give her account of the incident. By contrast,
 10 Defendant has not disciplined numerous non-Minority employees who have had customer
 11 complaints made against them.

12 61. Plaintiff Brown made numerous complaints to the Station Manager and to
 13 human resources regarding this racially discriminatory treatment. However, Defendant did not
 14 take any action regarding the complaints, apart from questioning Plaintiff Brown.

15 62. In 1995, Defendant opened the current Santa Clara Facility and transferred
 16 many of the service routes that had formerly been operated from the Milpitas Facility to the new
 17 facility. In allocating the Courier routes between the two facilities, Defendant divided Plaintiff
 18 Brown's route equally between the two centers. Plaintiff Brown's route was the only service route
 19 that was split. All the routes for non-Minority Couriers were kept intact. In order to keep her
 20 service area, Plaintiff Brown was required to transfer to the Santa Clara Facility as a part-time
 21 courier, thus losing the higher full-time pay. No non-Minority employee courier was required to
 22 convert to part-time status or to give up his or her route.

23 63. Defendant engaged in race-based discrimination by passing over Plaintiff
 24 Brown in favor of more junior, less qualified non-Minority employees for various promotions and
 25 higher paying positions. In the early 1990s, Plaintiff Brown applied for several sales
 26 representative positions that defendant had posted to employees. Plaintiff Brown was not hired
 27 for any of the sales representative positions despite her long service with Defendant. Instead,
 28 Defendant hired numerous non-Minority recent graduates, with little or no experience, and other

1 non-Minority employees from within the company. With her seniority, Plaintiff Brown should
 2 have been hired; the advertisements for the positions indicated that prior sales experience was not
 3 a requirement since the Company would provide necessary training.

4 64. Similarly, in 2000, Plaintiff Brown applied for two higher paying Dispatch
 5 positions at the Oakland Station and the Oakland Hub. However, Plaintiff Brown did not get
 6 either position. Once again, Defendant passed over her in favor of more junior, less qualified non-
 7 Minority employees.

8 65. In January 2001 and February 2002, Plaintiff Brown applied for Operations
 9 Manager positions at the Santa Clara Facility and the Milpitas Facility, respectively. In each case,
 10 Defendant promoted a non-African American to the position despite the fact that the non-African
 11 American had significantly less seniority than Plaintiff Brown and only Courier experience.
 12 Plaintiff Brown had Courier, acting Dispatcher, and Customer Service Agent experience and had
 13 been with the Company since 1982.

14 66. Plaintiff Brown is also informed and believes, and thereupon alleges, that
 15 she has been compensated less than similarly situated non-Minorities.

16 B. Individual Claims for Work Conditions, Harassment, and Retaliation

17 67. While Plaintiff Brown was a Courier at the Milpitas Facility, Defendant
 18 discriminated against her on the basis of race, saddling her with greater responsibilities than her
 19 non-Minority colleagues and thus making it more difficult for her to perform as well as them.
 20 Defendant required Plaintiff Brown to deliver packages on her route, as well as perform overflow
 21 responsibilities and make additional trips to pick up freight left by other Couriers. Defendant did
 22 not require Plaintiff Brown's non-Minority colleagues to perform these additional duties.

23 68. Defendant harassed Plaintiff Brown by criticizing her in a manner that was
 24 publicly embarrassing and humiliating. Instead of criticizing Plaintiff Brown in the privacy of an
 25 office as they did with non-Minority employees, Defendant would stop the conveyor belt to draw
 26 attention and criticize Plaintiff Brown while she was working among others on the Line.

27 69. In July 2002, Defendant retaliated against Plaintiff Brown for filing a racial
 28 discrimination complaint with the Department of Fair Employment and Housing. In response to

1 Plaintiff Brown's complaint, Defendant disciplined Plaintiff Brown more harshly than her non-
 2 Minority colleagues. Defendant disciplined Plaintiff Brown in response to a customer complaint
 3 but did not discipline the non-Minority employees also mentioned in the complaint.

4 70. In addition to the foregoing, Plaintiff Brown has experienced disparate
 5 treatment on the basis of race with respect to many employment practices by Defendant.

6 71. Plaintiff Brown filed a timely charge of discrimination with the EEOC on
 7 April 16, 2003, attached hereto as Exhibit "A," which was automatically cross-filed with the
 8 DFEH. Plaintiff Brown has received Notices of Right to Sue from the EEOC and from the
 9 DFEH.

10 **Rick Gonzales**

11 A. **Class Claims**

12 72. Plaintiff Rick Gonzales is a Latino male who was employed by Defendant
 13 FedEx Express as a Courier from May 1998 until September 2002.

14 73. Defendant has undermined Plaintiff Gonzales' attempts to attain
 15 management positions, while actively supporting non-Minority candidates in their efforts to
 16 secure management positions. Defendant never discussed or provided guidance to Plaintiff
 17 Gonzales about the possibility or process of entering management, although he had expressed his
 18 desire to advance to management several times. Further, Defendant did not offer him the support
 19 provided non-Minority employees in preparing for management, such as training him on
 20 computer systems or discussing a manager's operational responsibilities. Defendant's
 21 discriminatory management selection practices discouraged Plaintiff Gonzales from applying for
 22 management positions.

23 74. Plaintiff Gonzales observed that non-Minority employees were promoted
 24 to management faster than Minority Employees, and that management steered non-Minority
 25 employees into management positions. For example, during Plaintiff Gonzales' 5-year tenure at
 26 Defendant's Santa Fe Springs location, several non-Minority employees became managers, while
 27 only one Minority entered management. The Minority Employees were consistently given the
 28 worst shifts, working at night with the newest employees. Plaintiff Gonzales observed less senior

1 non-Minority employees being promoted to management before him even though he was equally
 2 if not more qualified for the positions that were open, but he did not observe his Minority peers
 3 attain management positions.

4 75. Defendant has further discriminated against Plaintiff Gonzales by engaging
 5 in discriminatory employment practices intended to and/or having the effect of undermining
 6 Plaintiff Gonzales' efforts to advance into Defendant's management ranks. In August 2002,
 7 Defendant refused to allow Plaintiff Gonzales to apply for management positions because his
 8 performance review rating was 3/10 of a point below the alleged cutoff. Plaintiff Gonzales
 9 believes that Defendant manipulates such subjective criteria in order to control who may become
 10 eligible for management. However, Plaintiff Gonzales is informed and believes that Defendant
 11 has permitted non-Minority employees to apply for management positions with performance
 12 review scores lower than that of Plaintiff Gonzales.

13 76. Defendant has discriminated against Plaintiff Gonzales by disciplining him
 14 for infractions for which non-Minority employees were not similarly disciplined. For example,
 15 Plaintiff Gonzales has received multiple OLCC's and warning letters for infractions such as
 16 incorrect calculations, packages not returned, and timecard errors. In contrast, his non-Minority
 17 peers were rarely disciplined for such conduct.

18 77. Plaintiff Gonzales is also informed and believes, and thereupon alleges,
 19 that he has been compensated less than similarly situated non-Minorities.

20 B. Individual Claim for Failure to Rehire from Disability

21 78. Defendant discriminated against Plaintiff Gonzales by failing to assisting
 22 him in securing a suitable position upon return from workers compensation leave. After Plaintiff
 23 Gonzales was injured on the job for the second time with a severe lower back injury, he required
 24 an extended leave. When he prepared to return to work, Defendant displaced him from his prior
 25 position and refused to identify a suitable position for him anywhere in Southern California,
 26 despite Plaintiff Gonzales' 12-year tenure and his offer to accept any position available, including
 27 those requiring relocation to Los Angeles or Las Vegas. Instead, Defendant sent Plaintiff
 28 Gonzales a termination letter on approximately September 13, 2002. Defendant has routinely

1 assisted non-Minority employees who have suffered permanent and temporary disabilities to find
 2 suitable job opportunities with FedEx.

3 79. In addition to the foregoing, Plaintiff Gonzales has experienced disparate
 4 treatment on the basis of race with respect to many employment practices by Defendant.

5 80. Plaintiff Gonzales filed a timely charge of discrimination with the EEOC
 6 on April 15, 2003, attached hereto as Exhibit "B," which was automatically cross-filed with the
 7 DFEH. Plaintiff Gonzales has received Notices of Right to Sue from the EEOC and from the
 8 DFEH.

9 **Cynthia Guerrero**

10 A. **Class Claims**

11 81. Defendant hired Plaintiff Guerrero in approximately 1995. Plaintiff
 12 Guerrero worked for Defendant in Commerce City and Santa Fe Springs, California as a
 13 Customer Service Agent and as a Courier.

14 82. Among other things, Defendant discriminated against Plaintiff Guerrero by
 15 failing to promote her to positions for which she was qualified and instead promoting less senior,
 16 less qualified non-Minority employees over her, and/or by paying Plaintiff Guerrero less than
 17 non-Minority employees, even though Plaintiff Guerrero has comparable responsibilities and
 18 more seniority and work experience. Plaintiff Guerrero was paid at the Courier/Handler rate until
 19 late 2002, even though she was performing the work of a regular Courier. The difference in pay
 20 between the two positions is about \$1/hour. The difference in job responsibilities is that
 21 Courier/Handlers cannot exceed 8 stops per hour, while Couriers can. Plaintiff Guerrero was
 22 often doing 18 stops per hour.

23 83. Upon beginning to perform the duties of a Courier, Plaintiff Guerrero
 24 asked Defendant when she would be upgraded to Courier pay. Defendant told Plaintiff Guerrero
 25 she could not be upgraded immediately because of a hiring freeze, but that she wouldn't have to
 26 wait more than a month. In fact, Plaintiff Guerrero was not upgraded until late 2002, after she
 27 filed her EEOC charge. Meanwhile, Plaintiff Guerrero's non-Minority colleagues did receive the
 28 upgrade.

1 84. Defendant also discriminated against Plaintiff Guerrero by reducing her
 2 work hours, thus negatively affecting her compensation, while increasing the work hours given to
 3 non-Minority employees with less seniority.

4 85. Defendant further discriminated against Plaintiff Guerrero by issuing
 5 formal disciplinary actions against her for petty or trivial matters, or matters unsupported or
 6 contradicted by credible evidence. Defendant has given Plaintiff Guerrero over 50 calendar
 7 notations for trivial matters such as failure to pull an airbill copy or forgetting to sign her time
 8 card, for which non-Minority employees are not disciplined. In fact, Defendant routinely
 9 overlooks late arrival, no-shows, and other more significant breaches of conduct by non-Minority
 10 employees.

11 86. Defendant has systematically discriminated against the employees in
 12 Plaintiff Guerrero's workgroup, called Loop 9, all of whom are Minority Employees.

13 87. Plaintiff Guerrero is also informed and believes, and thereupon alleges, that
 14 she has been compensated less than similarly situated non-Minorities.

15 B. **Individual Claim for Retaliation**

16 88. Defendant has also retaliated against Plaintiff Guerrero for complaining
 17 about race-based discrimination. Most recently, in July 2004, Defendant effectively terminated
 18 Plaintiff Guerrero. When Plaintiff Guerrero sought to clarify her employment status, which she
 19 had previously been informed was "inactive" due to long-term disability leave, Plaintiff Guerrero
 20 was informed that her employment was instead terminated due to her failure to find an alternative
 21 position with Defendant after she had been displaced.

22 89. In addition to the foregoing, Plaintiff Guerrero has experienced disparate
 23 treatment on the basis of race with respect to many employment practices by Defendant.

24 90. Plaintiff Guerrero filed timely charges of discrimination with the EEOC on
 25 June 13, 2002 and June 18, 2003, attached hereto as Exhibit "C," which were automatically
 26 cross-filed with the DFEH. Plaintiff Guerrero has received Notices of Right to Sue from the
 27 EEOC and from the DFEH.

Rachel Hutchins

A. Class Claims

91. Plaintiff Rachel Hutchins is an African American woman formerly employed by Defendant as a Handler in Bakersfield, California. Plaintiff worked for Defendant from December 1995 through April 1996, and again from March 2001 through January 2004.

92. Defendant hired and/or promoted less senior, less experienced non-Minority individuals to permanent or full-time positions, whereas Plaintiff Hutchins remained a casual Handler during her more than two and a half years with Defendant.

93. Defendant passed over Plaintiff in favor of less or equally qualified non-Minority individuals in filling positions for which Plaintiff applied. Starting in approximately October 2002, Plaintiff Hutchins sought a position as a Customer Service Agent (CSA). From approximately May or June 2002 to April 2003, Plaintiff Hutchins performed the duties of a Customer Service Agent, without a commensurate change in title or salary. Although Customer Service Agent positions became available, Defendant did not place Plaintiff Hutchins in these positions.

94. Plaintiff Hutchins complained several times to Defendant about its failure to promote her to a Customer Service Agent position. Defendant offered various excuses for this failure, including that Plaintiff Hutchins could not be promoted from Casual status. However, Defendant promoted non-Minority employees to permanent Customer Service Agent and Courier positions from Casual status. In one such instance, two Customer Service Agent positions became available in approximately November 2002, and Defendant informed Plaintiff Hutchins that she would receive one of the positions. Instead, however, Defendant placed in one of the positions a non-Minority employee who had no experience as a Customer Service Agent, whom Plaintiff Hutchins herself had trained, and who had quit her job a few weeks previously.

95. In April 2003, Defendant informed Plaintiff Hutchins that she would receive the next Customer Service Agent position that opened, without being required to apply. From approximately May 2003, a Customer Service Agent position was available. Although Plaintiff was qualified, Defendant still did not place Plaintiff Hutchins in a Customer Service

1 Agent position.

2 96. Defendant has discriminated against Plaintiff Hutchins with respect to
 3 compensation by paying her as a Handler, while requiring her to perform the duties of a Customer
 4 Service Agent. Defendant refused to offer Plaintiff Hutchins a Customer Service Agent position,
 5 or to change her title or compensation to reflect her additional duties.

6 97. Defendant also discriminated against Plaintiff Hutchins with respect to
 7 compensation by failing to pay her correctly for hours worked on Saturday over an approximately
 8 two month period. Plaintiff Hutchins was informed and believes that according to FedEx policy,
 9 temporary and casual employees are to be paid at the rate of one and a half times their hourly rate
 10 for work performed on Saturday. Plaintiff is informed and believes, and on that basis alleges, that
 11 non-Minority employees have been paid at the higher rate for such hours. Defendant has further
 12 discriminated against Plaintiff Hutchins with respect to compensation by allowing her to work
 13 fewer hours than similarly situated non-Minority employees, and by relegating her to casual
 14 status.

15 98. Plaintiff Hutchins is also informed and believes, and thereupon alleges, that
 16 she has been compensated less than similarly situated non-Minorities.

17 B. **Individual Claims for Termination and Retaliation**

18 99. Defendant retaliated against Plaintiff Hutchins for filing a charge of
 19 discrimination with the EEOC and for participating in this lawsuit by wrongfully terminating
 20 Plaintiff Hutchins on January 20, 2004.

21 100. In addition to the foregoing, Plaintiff Hutchins has experienced disparate
 22 treatment on the basis of race with respect to many employment practices by Defendant.

23 101. Plaintiff Hutchins filed a timely charge of discrimination with the EEOC
 24 on May 27, 2003, attached hereto as Exhibit "D," which was automatically cross-filed with the
 25 DFEH. Plaintiff Hutchins has received Notices of Right to Sue from the EEOC and from the
 26 DFEH. Plaintiff Hutchins supplemented this charge with a retaliation claim on August 16, 2004
 27 and has requested a Notice of Right to Sue.

Tyrone Merritt

A. Class Claims

102. Plaintiff Tyrone Merritt is an African American male employed by FedEx Express since September 1998. Plaintiff Merritt worked in FedEx Express's Phoenix, Arizona facility from the fall of 2001 through the summer of 2005. During that time, Plaintiff Merritt worked as a permanent part-time Handler.

103. During his tenure as a Handler in Phoenix, Plaintiff Merritt was passed over for numerous promotions, including promotions to the position of Courier. Plaintiff Merritt was not able to apply for a Courier promotion because he failed the Basic Skills Test (“BST”) in February 2003 and again in May 2005. The BST is a requirement for promotion to Courier positions even though it has tremendous adverse impact and has not been validated.

104. Plaintiff Merritt has also been passed over for promotions to other positions, including positions as a Dispatcher, Material Handler, Ramp Agent, and Team Leader, all of which were given to similarly situated white employees. Plaintiff Merritt was also passed over for two Dangerous Goods Specialist positions, which were both filled by white applicants with less seniority than Plaintiff Merritt.

105. Plaintiff Merritt has also been subjected to harsher discipline than similarly situated white employees. For example, in approximately February 2004, Plaintiff Merritt was reprimanded by his manager for a “drop can” violation because a can containing packages fell from his dolly. Plaintiff Merritt is aware of two white employees who dropped cans from their dollies, but received no reprimands.

106. Plaintiff Merritt has also been denied fair compensation because of FedEx Express' racially biased policies and practices.

B. Individual Claim for Denial of Leave Without Pay

107. Plaintiff Merritt was denied leave without pay (“LWOP”) in mid-2004, while similarly situated white employees were permitted to take LWOP.

108. In addition to the foregoing, Plaintiff Merritt has experienced disparate treatment on the basis of race with respect to many employment practices by Defendant.

1 109. Plaintiff Merritt filed a timely charge of discrimination with the EEOC on
 2 December 2, 2004, and a supplemental charge on July 1, 2005, both attached hereto as
 3 Exhibit "E." Plaintiff Merritt has requested a Notice of Right to Sue from the EEOC.

4 **Kelvin Smith, Sr.**

5 A. **Class Claims**

6 110. Defendant hired Plaintiff Smith in approximately November 1989 as a
 7 part-time Courier at the Santa Clara Facility.

8 111. From April 2002 through July 2002, Plaintiff Smith acted as Operations
 9 Manager for PM Sort Operations at his Facility. His duties included closing down the facility,
 10 covering sick calls, enlisting Couriers to help loading, assuring that freight got on shuttles in time,
 11 guiding the movement of trucks within the Facility, and coordinating the activities of Handlers,
 12 Loaders and Dispatchers. The only management function that Plaintiff Smith did not perform
 13 was providing performance reviews. Repeatedly, Plaintiff Smith requested that Defendant permit
 14 him to complete the management training program and enable him to promote to open Operations
 15 Manager positions. Defendant failed to assist Plaintiff Smith.

16 112. Defendant undermined Plaintiff Smith's efforts to obtain management
 17 training while actively supporting non-Minority candidates in their efforts to secure management
 18 training. Plaintiff Smith participated in the ASPIRE management training program, successfully
 19 completed the program's required tests and assessments, and not only met but exceeded the
 20 performance review requirements. However, Defendant failed to allow Plaintiff Smith to
 21 complete the final part of the program, a peer assessment that had to be scheduled by
 22 management. From April 2002 through July 2002, Plaintiff Smith's managers ignored his
 23 repeated requests to complete the peer review section. By contrast, Defendant consistently
 24 assisted less senior and less experienced non-Minority ASPIRE participants in completing the
 25 program, thereby permitting them to apply for management positions for which Plaintiff Smith
 26 remained ineligible because of Defendant's failures.

27 113. Defendant discriminated against Plaintiff Smith by paying him less than
 28 less senior and/or similarly situated non-Minority employees. Defendant paid Plaintiff Smith less

1 than less experienced non-Minority Lead Handlers, even when Plaintiff Smith was required to
 2 perform management duties for the PM operations.

3 114. Defendant provided inferior training to Plaintiff Smith compared with
 4 similarly situated non-Minority employees. While Plaintiff Smith was acting as an Operations
 5 Manager from April 2002 to July 2002, Defendant failed to provide Plaintiff Smith with the level
 6 of training provided to Plaintiff Smith's non-Minority peers with respect to particular operational
 7 indices in Plaintiff Smith's facility.

8 115. Defendant discriminated against Plaintiff Smith by disciplining him for
 9 infractions for which non-Minority employees were not similarly disciplined. In February 2002,
 10 Defendant issued Plaintiff Smith his first warning letter for administering a makeshift procedure
 11 to assure that the Facility would meet performance objectives. Plaintiff Smith was also
 12 suspended for a week. Plaintiff Smith had performed the procedure only upon directives from his
 13 non-Minority Manager and Station Manager. However, Defendant did not discipline, either
 14 verbally or with warning letters, the two non-Minority managers responsible for implementing the
 15 Astra Sops procedure. African American Plaintiff Satchell was the only other person disciplined
 16 in the matter. Similarly, Defendant has not disciplined non-Minority employees for actions taken
 17 as a result of management directives.

18 116. In May 2002, Plaintiff Smith was again unfairly disciplined when a delay
 19 caused freight to arrive late at the ramp. The non-Minority manager responsible for the delay was
 20 not disciplined.

21 117. Plaintiff Smith is also informed and believes, and thereupon alleges, that he
 22 has been compensated less than similarly situated non-Minorities.

23 B. **Individual Claims for Termination and Retaliation**

24 118. In July 2002, in retaliation for Plaintiff Smith's filing of a complaint with
 25 the Department of Fair Employment and Housing for racial discrimination and harassment,
 26 Defendant wrongfully terminated Plaintiff Smith for a trivial time card oversight that had no
 27 practical impact on Plaintiff Smith's wages and that was identified on the same day before any
 28 processing. Defendant routinely allows non-Minority employees or managers to correct

1 identified mistakes on timecards.

2 119. In this particular case, Plaintiff Smith failed to clock an authorized ten-
 3 minute break to collect his children from daycare. Plaintiff Smith's Station Manger, upon seeing
 4 Plaintiff Smith with his children, took it upon herself to instruct Plaintiff Smith's manager to
 5 check his timecard to see if Plaintiff Smith had clocked his break. The Station Manager did not
 6 permit Plaintiff Smith to correct the mistake, even though non-Minority employees routinely
 7 correct mistakes on time cards. Non-Minority Employees also routinely take breaks without
 8 indicating them by time codes on their time cards. Defendant does not strictly police every
 9 movement of non-Minority employees, nor do Station Managers concern themselves with such
 10 employee matters that are more properly handled by an Operations Manager. Finally, Defendant
 11 is liberal in accommodating childcare concerns of non-Minority employees, especially when such
 12 accommodation has, as in the case of Plaintiff Smith, no material impact on the employee's job
 13 performance.

14 120. In August 2002, Defendant refused to rehire Plaintiff Smith to his position
 15 as Lead Handler when it upheld its discriminatory discipline and wrongful termination actions
 16 against him. Plaintiff Smith had filed an internal discrimination complaint, as well as a
 17 Guaranteed Fair Treatment ("GFT") request in connection with his discriminatory discipline and
 18 wrongful termination claims dating from February 2002 through Plaintiff Smith's termination in
 19 July 2002. As part of his appeal, Plaintiff Smith submitted facts supporting his claims of
 20 differential treatment and discrimination at the hands of Defendant. Defendant has overturned
 21 unfair actions and rehired non-Minority employees upon the basis of much less credible
 22 information than that provided by Plaintiff Smith.

23 121. In addition to the foregoing, Plaintiff Smith has experienced disparate
 24 treatment on the basis of race with respect to many employment practices by Defendant.

25 122. Plaintiff Smith filed a timely charge of discrimination with the EEOC on
 26 June 24, 2003, which was automatically cross-filed with the DFEH, and filed a separate timely
 27 charge with the DFEH on July 22, 2002. These charges are attached hereto as Exhibit "F."
 28 Plaintiff Smith has received Notices of Right to Sue from the EEOC and from the DFEH.

1 **Ken Stevenson**

2 **A. Class Claims**

3 123. Plaintiff Stevenson is an African American male currently employed by
 4 Defendant as an Operations Manager in Compton, California. Plaintiff Stevenson began working
 5 for Defendant in approximately May 1997 as a casual, part-time Courier.

6 124. Defendant consistently undermined Plaintiff Stevenson's efforts to attain
 7 management positions, while actively supporting non-Minority employees in their attempts to
 8 enter management. Prior to his promotion to Operations Manager in 2005, Plaintiff Stevenson
 9 had sought to apply for promotion more than ten times, without success. Rather than respond to
 10 Plaintiff Stevenson's multiple efforts to secure a management position, Defendant offered
 11 baseless excuses for its failure to promote him. For example, Senior Manager Mike Smith told
 12 Plaintiff Stevenson that he must complete management classes, but when Plaintiff indicated his
 13 willingness to begin management classes, Smith postponed the classes, and then only held them
 14 intermittently. On other occasions, Defendant told Plaintiff Stevenson there was a "hiring
 15 freeze." Meanwhile, Defendant promoted other less senior non-Minority employees over
 16 Plaintiff Stevenson, such as Tim Becker and Mike Aroz, notwithstanding the fact that Plaintiff
 17 Stevenson received a higher management assessment.

18 125. Defendant also required Plaintiff Stevenson to attend management classes
 19 on his own time, while non-Minority employees, such as Becker and Aroz, were allowed to
 20 attend them during work time.

21 126. Smith further told Plaintiff Stevenson that he would never be a manager as
 22 long as Smith worked at the facility. Plaintiff Stevenson's co-workers told him they have heard
 23 similar comments from Smith and others about Plaintiff Stevenson.

24 127. Defendant has discriminated against Plaintiff Stevenson by disciplining
 25 him for infractions for which non-Minority employees were not similarly disciplined. For
 26 example, Defendant has disciplined Plaintiff Stevenson for failing to tuck in his shirt, but
 27 Defendant refuses to purchase shirts big enough for Plaintiff Stevenson. Defendant has further
 28 used such petty infractions as barriers to Plaintiff Stevenson's promotion into management. For

1 example, on May 8, 2003, Defendant informed Plaintiff Stevenson that he could not apply for a
 2 vacant manager position because his socks were too short. When Plaintiff Stevenson pointed out
 3 that Mike Aroz, a non-Minority employee, wore his socks in an identical fashion, Defendant
 4 simply instructed Aroz to change his socks, but did not prevent him from applying for the
 5 manager position. Aroz became a manager approximately two weeks later.

6 128. Plaintiff Stevenson is also informed and believes, and thereupon alleges,
 7 that he has been compensated less than similarly situated non-Minorities.

8 B. **Individual Claim for Harassment**

9 129. Defendant has used, or permitted others to use, offensive racial epithets in
 10 Plaintiff Stevenson's workplace. For example, when Plaintiff Stevenson's car was stolen,
 11 Operations Manager Shelley Humphrey stated, "You people drive those kind of cars." When
 12 Plaintiff Stevenson reported the comment to his supervisor, Roger Fleud, Fleud said, "We all
 13 have a little racism in us." When Plaintiff Stevenson filed an internal EEO complaint about these
 14 comments, Defendant retaliated against him by further blocking him from being promoted to
 15 management.

16 130. In addition to the foregoing, Plaintiff Stevenson has experienced disparate
 17 treatment on the basis of race with respect to many employment practices by Defendant.

18 131. Plaintiff Stevenson filed a timely charge of discrimination with the EEOC
 19 on June 13, 2002, attached hereto as Exhibit "G," which was automatically cross-filed with the
 20 DFEH. Plaintiff Stevenson has received Notices of Right to Sue from the EEOC and from the
 21 DFEH.

22 **II. AFRICAN AMERICAN LOWER-LEVEL MANAGER CLASS**

23 **Derrick Satchell**

24 A. **Class Claims**

25 132. Plaintiff Satchell was hired by Defendant FedEx Express in approximately
 26 June 1992 as a part-time Handler at Defendant's Facility in Santa Clara, California. Despite
 27 repeated requests by Plaintiff Satchell for full-time employment, Defendant hired and/or
 28 promoted less senior, less experienced non-Minority individuals to Courier and other full-time

1 positions before Defendant gave Plaintiff Satchell a full-time position.

2 133. Once Plaintiff Satchell finally obtained a position as an Operations
 3 Manager, Defendant also consistently issued formal disciplinary actions against Plaintiff Satchell
 4 for petty or trivial matters for which non-Minority employees were not disciplined, thus lowering
 5 Plaintiff Satchell's performance reviews and rendering him ineligible for promotion.

6 134. Defendant discriminated against Plaintiff Satchell by paying him less than
 7 less senior and/or similarly situated non-Minority employees. Throughout Plaintiff Satchell's
 8 employment with FedEx, Defendant paid Plaintiff Satchell less than non-Minority managers even
 9 though Plaintiff Satchell had comparable responsibilities and more seniority and management
 10 experience.

11 135. In approximately December 1999, when Plaintiff Satchell was a Courier
 12 Operations Manager, Plaintiff Satchell received his first warning letter for excessive late
 13 deliveries by Couriers on Mondays. Defendant disciplined Plaintiff Satchell despite the fact that
 14 the problem dated back to a prior Operations Manager's tenure and that the late deliveries were
 15 occurring only on Plaintiff Satchell's scheduled day off. Defendant has not reprimanded non-
 16 Minority managers, much less given warning letters, where the non-Minorities were not directly
 17 responsible for the infraction. In addition, Defendant had not disciplined the non-Minority
 18 manager who supervised the workgroup prior to Plaintiff Satchell.

19 136. In approximately August 2001, Defendant disciplined Plaintiff Satchell for
 20 insubordination for failure to submit, in a timely manner, an action plan for correcting a
 21 deficiency in his operations. Plaintiff Satchell failed to submit the action plan on time because
 22 Defendant had not properly notified Plaintiff Satchell of his need to submit the Plan. Plaintiff
 23 Satchell was required to work through the night to prepare the plan and submitted it a day late.
 24 Defendant disciplined Plaintiff Satchell even though he had proof that other non-Minority
 25 managers were also failing in the cited area, but were not required to submit similar Action Plans
 26 and were not otherwise disciplined.

27 137. Defendant disciplined Plaintiff Satchell again in November 2001 in
 28 connection with his performance review. Defendant gave Plaintiff Satchell a warning letter after

1 rating his performance as 1.0 in one area of the review due to Plaintiff Satchell's group's failure
 2 to improve in that area. Plaintiff Satchell's Senior Manager, Christopher Matthews, refused to
 3 alter the low rating when Plaintiff Satchell produced emails from Matthews commending Plaintiff
 4 Satchell's group for improvement in the area in question, and stating "excellent job; now you
 5 only need to maintain it." Defendant's personnel policy states that disciplinary letters should not
 6 be issued where only one or two areas of a review are deficient; a warning letter is warranted only
 7 if an entire performance review is 1.0 or below. Defendant does not issue warning letters to non-
 8 Minority managers regarding performance reviews unless the entire review is unsatisfactory.
 9 Further, Defendant does not issue warning letters to non-Minorities who provide evidence
 10 contradicting an allegation of unsatisfactory performance.

11 138. On December 1, 2001, Plaintiff Satchell met with District Director Steven
 12 Seymour regarding the warning letter. Seymour assured Plaintiff Satchell that the letter would
 13 not be entered in the system. Based on Seymour's assurance, Plaintiff Satchell did not pursue the
 14 Guaranteed Fair Treatment ("GFT") process further. When Defendant terminated Plaintiff
 15 Satchell's employment in April 2002 for three active, documented disciplinary actions, the
 16 warning letter in question was counted toward the three.

17 139. In November 2001, Defendant gave Plaintiff Satchell an OLCC because he
 18 had failed to cancel excess minimum hour pay for Couriers in his group who had not actually
 19 worked the minimum number of hours. At the time, Plaintiff Satchell informed Defendant that
 20 canceling the minimum without a waiver would violate policy. In December 2001, Seymour and
 21 Matthews informed managers at the Santa Clara Facility that they wanted excess minimum hours
 22 cancelled regardless of waivers. Again, Plaintiff Satchell objected, citing policy, but cancelled
 23 the hours anyway. Plaintiff Satchell was issued a warning letter, however, because he
 24 inadvertently failed to cancel the excess minimum hours of a few couriers. Whereas Defendant
 25 issued Plaintiff Satchell a warning letter for his inadvertent failure to cancel payment for excess
 26 minimum hours, Defendant refused to issue warning letters to non-Minority managers, such as
 27 Paul Birkenbach, who also failed a second time to cancel excess minimum hours.

28 140. Plaintiff Satchell is also informed and believes, and thereupon alleges, that

he has been compensated less than similarly situated non-Minorities.

B. Individual Claims for Failure to Promote, Termination, and Retaliation

141. Defendant undermined Plaintiff Satchell's efforts to advance within management, while actively supporting his non-Minority peer managers in their efforts to advance within management. Defendant discriminated against Plaintiff Satchell by failing to advance or promote Plaintiff Satchell from a Level 25 to Level 26 Operations Manager during his employment with the Company. Plaintiff had satisfied all the requirements for a Level 26 promotion, including having been in a Level 25 manager position for over 18 months and having received successive performance reviews in excess of 3.0. By contrast, Defendant promoted numerous non-Minority Operations Managers to Level 26 who joined management after Plaintiff Satchell and had received equal or lower performance reviews.

142. Defendant excluded Plaintiff Satchell from “informal” email buddy lists used by Regional, District and Station Managers to communicate relevant operating procedures and corporate advancement opportunities and to informally discuss managerial issues.

143. Defendant provided inferior training to Plaintiff Satchell compared with similarly situated non-Minority employees, adversely affecting his ability to obtain a promotion. Defendant failed to provide Plaintiff Satchell with the level of training provided to Plaintiff Satchell's non-Minority peer managers with respect to particular operational indices in Plaintiff Satchell's facility. Defendant also failed to sufficiently staff Plaintiff Satchell's workgroup so that objectives could be met in accordance with Defendant's expectations. By contrast, Defendant provided Plaintiff Satchell's non-Minority peer managers with proper staffing or assigned employees from other workgroups to assist the workgroups of non-Minority employees.

144. Defendant discriminated against Plaintiff Satchell by terminating Plaintiff for conduct for which non-Minority employees were not similarly terminated. In March 2002, Defendant had an interim manager issue Plaintiff Satchell a third documented disciplinary action within a 12-month period, and immediately terminated his employment. Defendant disciplined and terminated Plaintiff Satchell for time card falsification. The time card “falsification” forming

1 the basis for the termination was Plaintiff Satchell's cancellation of employee minimum hours in
 2 December 2001 that Plaintiff Satchell performed upon directives from Matthews and Seymour.
 3 Plaintiff Satchell had objected to canceling the minimum hours without an employee waiver.

4 145. On August 28, 2002, Defendant refused to rehire Plaintiff Satchell as an
 5 Operations Manager after an Appeals Board in Memphis, Tennessee refused to overturn its
 6 discriminatory discipline and wrongful termination actions. In April 2002, Plaintiff Satchell had
 7 filed an internal discrimination complaint, as well as a GFT request in connection with his
 8 discriminatory discipline, promotion, compensation, and wrongful termination claims dating from
 9 August 2001 through Plaintiff Satchell's termination. As part of his appeal, Plaintiff Satchell
 10 submitted facts supporting his claims of differential treatment and discrimination by Defendant.
 11 Defendant has rehired and overturned unfair actions against non-Minority employees upon the
 12 basis of much less credible information than that provided by Plaintiff Satchell.

13 146. Defendant retaliated against Plaintiff Satchell for complaining of
 14 discrimination. After Defendant terminated Plaintiff Satchell's employment in April 2002,
 15 Plaintiff filed a race discrimination and wrongful termination complaint against Defendant with
 16 the California Department of Fair Employment and Housing. In December 2002, Plaintiff
 17 Satchell filed a civil complaint for race discrimination in Superior Court. In response to Plaintiff
 18 Satchell's complaints, Defendant has engaged in a pattern of making defamatory statements
 19 against Plaintiff Satchell to employers seeking to hire Plaintiff Satchell. As a result of
 20 Defendant's defamatory statements, Plaintiff Satchell had great difficulty in securing employment
 21 after his termination by Defendant. On numerous occasions, prospective employers successfully
 22 completed several rounds of interviews with Plaintiff Satchell, commended Plaintiff Satchell on
 23 his presentation and employment record, indicated satisfaction with his references, and provided
 24 Plaintiff Satchell with strong indication of their interest in employing him. However, upon
 25 speaking with or receiving letters from Defendant regarding Plaintiff Satchell, the employers
 26 declined to hire Plaintiff Satchell. In June 2002, Airborne Express declined to hire Plaintiff
 27 Satchell after Defendant defamed Plaintiff Satchell in retaliation for filing a complaint. Yellow
 28 Transportation similarly declined to hire Plaintiff Satchell after Defendant's retaliatory actions.

1 Further, after speaking with Defendant in December 2002, Coca-Cola Company refused to hire
 2 Plaintiff Satchell after 6 successful interviews from August 2002 to December 2002.

3 147. In addition to the foregoing, Plaintiff Satchell has experienced disparate
 4 treatment on the basis of race with respect to many employment practices by Defendant.

5 148. Plaintiff Satchell filed a timely charge of discrimination with the EEOC on
 6 May 6, 2003, attached hereto as Exhibit "H," which was automatically cross-filed with the
 7 DFEH. Plaintiff Satchell has received Notices of Right to Sue from the EEOC and the DFEH.

8 **Kalini Boykin**

9 A. **Class Claims**

10 149. Plaintiff Boykin was hired by Defendant in approximately May 1995 as a
 11 casual, part-time Handler at the Oakland Hub. Despite repeated requests for available permanent
 12 and full-time positions, Defendant hired and/or promoted many less senior non-Minority
 13 individuals to permanent positions before Defendant gave Plaintiff Boykin a permanent position.
 14 For example, in approximately June 1997, Plaintiff Boykin applied for the full-time position of
 15 Control Room Agent at the Oakland Hub; however, Defendant passed her over in favor of a
 16 subsequently hired and less experienced, non-African American.

17 150. Plaintiff Boykin also interviewed for numerous other full-time positions
 18 before she was finally promoted to a full-time Truck Control Agent position in January 1998.
 19 Other non-Minority employees with similar qualifications and experience were promoted to this
 20 position sooner than Plaintiff Boykin.

21 151. Plaintiff Boykin also was rarely permitted to earn overtime hours, while
 22 non-Minority employees were permitted to work overtime when necessary, earning wages at the
 23 higher overtime rate.

24 152. In 1999, Plaintiff Boykin was promoted to an RTD Driver position after
 25 several unsuccessful attempts to obtain the promotion despite being qualified. As in her previous
 26 positions, Plaintiff Boykin excelled as an RTD Driver. She received a consistent 7.0 out of 7.0 on
 27 her performance reviews. Plaintiff Boykin also excelled in Defendant's ASPIRE management
 28 training program. On each of the three program assessments, (i) the Quantitative Assessment, (ii)

1 the Psychological Assessment, and the (iii) Peer Assessment, Plaintiff Boykin scored the highest
 2 possible grade, 5 on a scale of 5.

3 153. In May 2000, Plaintiff Boykin applied for one of two Operations Manager
 4 positions at the San Leandro Facility. Despite Plaintiff Boykin's superior qualifications and the
 5 strong recommendation of her manager, Defendant, including specifically Senior Manager Robert
 6 Montez and Regional Vice President Michael Pigors, passed over Plaintiff Boykin in favor of two
 7 less experienced and less qualified non-Minority applicants, Carl Bowersmith and Mark Azevedo.

8 154. Because of Plaintiff Boykin's superior qualifications, Defendant
 9 improperly conducted the interviews so as to minimize the advantages that Plaintiff Boykin
 10 possessed over the two non-Minority applicants. Contrary to Defendant's policy, Defendant
 11 conducted the interviews at separate locations and with separate panels.

12 155. In response to the discriminatory hiring procedures, Plaintiff Boykin filed a
 13 GFT. After an investigation, Defendant was directed to conduct the interviews again, and
 14 interviews were scheduled for the following week at another facility before the same panel.

15 156. At the second interview, Defendant once again selected Bowersmith and
 16 Azevedo for the two Operations Manager positions. Defendant was unable to explain why
 17 Bowersmith and Azevedo were more qualified than Plaintiff Boykin when she raised the issue
 18 with manager Montez.

19 157. After being passed over a second time, Plaintiff Boykin filed another GFT
 20 request together with an EEO discrimination complaint. Defendant failed to properly investigate
 21 Plaintiff Boykin's discrimination complaint. Even though Defendant scheduled an arbitration to
 22 explore Plaintiff Boykin's allegations, they failed to follow up or report any findings to Plaintiff
 23 Boykin. Moreover, no one ever contacted Plaintiff Boykin from Employee Relations at
 24 Defendant's Memphis headquarters to discuss the complaint with Plaintiff Boykin. In fact,
 25 Plaintiff Boykin never received a response to her EEO complaint even though she has never
 26 withdrawn it.

27 158. Plaintiff Boykin is informed and believes, and thereupon alleges, that she
 28 has been compensated less than similarly situated non-Minorities. Even after Plaintiff Boykin

1 ultimately was made a manager after several attempts, Defendant continued to discriminate
 2 against her on the basis of race. While Defendant paid Carl Bowersmith a salary in the first
 3 quartile for managers in their grade (Level 25), Plaintiff Boykin was paid at the lowest rate in
 4 Level 25. Plaintiff was paid at a lower rate despite being assigned greater management
 5 responsibilities than the two non-Minority managers. Upon becoming a manager, Plaintiff Boykin
 6 assumed all the responsibilities of the manager who had stepped down and more. She was
 7 responsible for the PM operations for RTD drivers in the entire South Bay and mid-Peninsula
 8 service area, which includes both San Francisco stations, the South San Francisco Facility, Palo
 9 Alto, the San Jose Facility, the Santa Clara Facility, the Sunnyvale Facility, the Oakland Hub, and
 10 the San Jose and San Francisco Ramps. The operations for which she was responsible lasted from
 11 3:00 PM to midnight. Plaintiff Boykin was responsible for over 100 routes daily and 24
 12 employees.

13 159. By contrast, Bowersmith was given a relatively easy management
 14 assignment. Bowersmith was made responsible for the Weekend Operation, a 20-hour operation
 15 on Saturdays and Sundays. The Weekend Operation involves nine employees, all moving freight
 16 from the San Leandro Facility to the Oakland Hub.

17 160. Defendant also discriminated against Plaintiff Boykin by failing to provide
 18 management support to Plaintiff Boykin, making it more difficult for her to perform her job
 19 duties. Montez spent little time with Plaintiff Boykin, instead focusing his attention on assisting
 20 Bowersmith to develop as a manager.

21 161. Despite her lack of support from Defendant, Plaintiff Boykin excelled in
 22 her management responsibilities. In her first year as a manager, Plaintiff Boykin turned the
 23 extremely uncooperative workgroup that she inherited from Mike Kelly, the previous non-
 24 Minority manager, into a highly productive group. In that first year, Plaintiff Boykin received a
 25 Survey Feedback Score (“SFA”) of 97 from her group, and a SFA score of 94 in the second year.³
 26 Moreover, Plaintiff Boykin received a leadership average of 4.9 in her first year and one of 4.7 in
 27

28 ³ A SFA is an hourly employee’s review of his or her manager. SFA are considered in determining a manager’s
 promotability and performance reviews.

1 her second year. Plaintiff Boykin also received a commendation from the Senior Vice President
 2 for her management abilities.

3 162. Nevertheless, Defendant took additional steps to undermine her
 4 advancement in Defendant's management ranks. Montez refused to timely perform Plaintiff
 5 Boykin's performance reviews, which are essential to pay rate and grade level increases. Plaintiff
 6 Boykin was scheduled for a 3-month performance review prior to taking a maternity leave.
 7 Though Montez timely performed the performance reviews for Bowersmith, he delayed Plaintiff
 8 Boykin's review until she returned from her maternity leave. At that time, he gave Plaintiff
 9 Boykin a three-month review and the two non-Minority managers six-month reviews.

10 163. Montez also discriminated against Plaintiff Boykin by providing her with
 11 an unreasonably low review of 2.8. Defendant initially attempted to give Plaintiff Boykin a rating
 12 of 2.5, but Plaintiff Boykin rebutted each and every basis for Montez's grading. Defendant rated
 13 Plaintiff Boykin below 3.0, despite her exemplary performance as reflected in her SFA scores, in
 14 order to preclude her from receiving any pay or grade level increases. By contrast, the two non-
 15 Minority managers were given higher scores and pay increases. Defendant has routinely delayed
 16 Plaintiff Boykin's pay and grade level increases, requiring her to take extra measures in order to
 17 receive the same benefits as the two non-Minority managers.

18 164. In March 2001, Defendant continued its discrimination against Plaintiff
 19 Boykin by disciplining her for a trivial matter for which it has routinely refused to discipline non-
 20 Minority employees. Montez informed Plaintiff Boykin that she had failed to provide for an ad
 21 hoc, unscheduled pick-up for an institutional customer. As a result of attempting to assure that the
 22 Sacramento route was covered in light of Defendant's failure to provide her with sufficient RTD
 23 Drivers, Plaintiff Boykin had inadvertently missed the order. However, the AM Operations
 24 Manager with Plaintiff Boykin's responsibilities, had the order picked up the next morning. Since
 25 the package was an economy order, there was no failure by Defendant to meet its delivery
 26 deadlines.

27 165. As a result of the missed pick up, Montez threatened to give Plaintiff
 28 Boykin a written warning letter. Defendant's standard disciplinary practice is to provide written

1 warning letters only after an employee has committed previous acts deserving discipline.
 2 Defendant has not provided documented counseling to non-Minority managers or employees
 3 upon their first offense. In response to Plaintiff Boykin's pleas for fairness, Montez indicated that
 4 he would give Plaintiff Boykin only a verbal warning if she would prepare a corrective action
 5 plan to address the oversight.

6 166. Plaintiff Boykin submitted the action plans as requested and was informed
 7 by District Manager Robin VanGalder and Montez that it was insufficient. Defendant insisted on
 8 giving Plaintiff Boykin a documented counseling despite earlier assurances that she would only
 9 get a verbal warning. Furthermore, VanGalder and Montez informed Plaintiff Boykin that she had
 10 been guilty of "gross leadership failure" and that she was a bad manager. Non-Minority managers
 11 have frequently failed to have packages picked up on time yet have not been disciplined, much
 12 less given OLCCs or written warnings or accused of "gross leadership failure."

13 B. **Individual Claims for Working Conditions and Retaliation**

14 167. Defendant assigned more burdensome job duties and shifts to Plaintiff
 15 Boykin than to non-Minority employees, thus making it more difficult for her to perform as well
 16 as her non-Minority peers. While a part-time Handler, Defendant discriminated against Plaintiff
 17 Boykin on the basis of race by routinely assigning her to work on the busiest conveyor belts, or
 18 "slides" as they are called at the Oakland Hub, where thousands of packages are processed. By
 19 contrast, many stronger non-Minority employees were permitted to work on less taxing slides
 20 where packages numbered in the hundreds, not thousands.

21 168. In November 2003, after Plaintiff Boykin had filed her charge with the
 22 EEOC, Defendant retaliated against Plaintiff Boykin by changing her schedule from her regular
 23 time of 1:30 PM to 10:30 PM to a more undesirable shift, 1:00 AM to 10:00 AM. Defendant did
 24 not adversely change the hours of the non-Minority Operations Managers with the same seniority
 25 as Plaintiff Boykin.

26 169. Defendant has further retaliated against Plaintiff Boykin for complaining
 27 about race-based discrimination, for filing a charge with the EEOC, and for participating in this
 28 lawsuit, by suspending her without cause and failing to offer her a suitable position after a

1 medical leave of absence.

2 170. In addition to the foregoing, Plaintiff Boykin has experienced disparate
3 treatment on the basis of race with respect to many employment practices by Defendant.

4 171. Plaintiff Boykin filed a timely charge of discrimination with the EEOC on
5 May 6, 2003, and filed a timely charge with the DFEH in July 31, 2002, attached hereto as
6 Exhibit "I." Plaintiff Boykin has received Notices of Right to Sue from the EEOC and from the
7 DFEH. Plaintiff Boykin supplemented this charge with a retaliation claim dated October 10,
8 2005 and has requested a Notice of Right to Sue.

9

10 **FIRST CLAIM FOR RELIEF**
VIOLATION OF TITLE VII—CLASS CLAIMS

11 172. This claim is brought on behalf of all Plaintiffs and the class of Minority
12 Employees and the class of African American Lower-Level Managers.

13 173. The class period for the Minority Employee Class for this Claim for Relief
14 is from June 20, 2002 through the date of judgment. The class period for the African American
15 Lower-Level Manager Class for this Claim for Relief is from July 10, 2002 through the date of
16 judgment.

17 174. Plaintiffs Satchell, Boykin, Brown, Gonzales, Guerrero, Hutchins, Merritt,
18 Smith and Stevenson filed timely charges of discrimination with the Equal Employment
19 Opportunity Commission, received right to sue letters⁴, and timely filed the instant claim.

20 175. The foregoing conduct violates Title VII of the Civil Rights Act of 1964,
21 42 U.S.C. §§ 2000(e), *et seq.*

22 **A. Disparate Impact**

23 176. As to disparate impact, Plaintiffs incorporate by reference the allegations of
24 paragraphs 1 through 31, 33 through 66, 72 through 77, 81 through 87, 91 through 98, 102
25 through 106, 110 through 117, 123 through 128, 132 through 140, and 149 through 166, above, as
26 though fully set forth herein.

27 177. Defendant has maintained a system for making decisions about

28 ⁴ Plaintiff Merritt has requested a right to sue letter.

1 promotions, assignments (as to the Minority Employee Class), compensation, and discipline
 2 which is excessively subjective and which has had a disparate impact on Plaintiffs, the Minority
 3 Employee Class, and the African American Lower-Level Manager Class. This system cannot be
 4 justified by business necessity, but even if it could be so justified, less discriminatory alternatives
 5 exist that could equally serve any alleged necessity. Defendant's policies and practices that have
 6 a disparate impact on Plaintiffs and the classes they represent are alleged in paragraph 43 above.

7 178. Defendant's discriminatory policies and practices as described above have
 8 denied Plaintiffs and the classes they represent promotions, desirable job assignments (as to the
 9 Minority Employee Class), and compensation to which they were and are entitled; have caused
 10 Plaintiffs and the classes they represent to be disciplined when they should not have been,
 11 resulting in the loss of past and future wages and other job benefits; and have caused Plaintiffs
 12 and the classes they represent to suffer humiliation, embarrassment and emotional distress.

13 **B. Disparate Treatment**

14 179. As to disparate treatment, Plaintiffs incorporate by reference the allegations
 15 of paragraphs 1 through 178, above, as though fully set forth herein.

16 180. Defendant has engaged in a pattern and practice of intentional
 17 discrimination against Plaintiffs and the classes in promotions, assignments (as to the Minority
 18 Employee Class), compensation, and discipline.

19 181. Plaintiffs request relief as to both their disparate impact and disparate
 20 treatment claims as provided in the Prayer for Relief below.

21 **SECOND CLAIM FOR RELIEF**
 22 **VIOLATION OF TITLE VII—NON-CLASS CLAIMS FOR DISPARATE TREATMENT**

23 182. Plaintiffs incorporate by reference the allegations of paragraphs 1 through
 24 181, above, as though fully set forth herein. This claim is brought on behalf of the named
 25 Plaintiffs individually for their non-class claims.

26 183. Defendant intentionally discriminated against named Plaintiffs Brown,
 27 Gonzales, Merritt, Smith, Stevenson, Satchell, and Boykin on the basis of their race.
 28

184. Defendant subjected named Plaintiffs Brown, Gonzales, Merritt, Smith, Stevenson, Satchell, and Boykin to a racially hostile work environment.

185. Defendant intentionally discriminated against Plaintiff Brown by subjecting her to more burdensome work conditions than similarly situated non-Minority employees, subjecting her to harassment, and retaliating against her for filing a discrimination complaint.

186. Defendant intentionally discriminated against Plaintiff Gonzales by failing to rehire him from disability.

187. Defendant intentionally discriminated against Plaintiff Merritt by singling him out for discipline and by denying him leave without pay.

188. Defendant intentionally discriminated against Plaintiff Smith by retaliating against him for filing a discrimination complaint and terminating him.

189. Defendant intentionally discriminated against Plaintiff Stevenson by subjecting him to harassment.

190. Defendant intentionally discriminated against Plaintiff Satchell by retaliating against him for filing a discrimination complaint and terminating him.

191. Defendant intentionally discriminated against Plaintiff Boykin by subjecting her to more burdensome work conditions than similarly situated non-Minority employees.

192. Defendant's discriminatory and retaliatory practices have resulted in the loss of past and future wages and other job benefits, and have caused Plaintiffs to suffer humiliation, embarrassment and emotional distress.

193. Plaintiffs request relief as to both their disparate impact and disparate treatment claims as provided in the Prayer for Relief below.

**THIRD CLAIM FOR RELIEF
VIOLATION OF 42 U.S.C. § 1981—CLASS CLAIMS**

194. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 193, above, as though fully set forth herein.

195. This claim is brought on behalf of all Plaintiffs and the Minority Employee Class and the African American Lower-Level Manager Class.

196. The class period for both the Minority Employee Class and the African American Lower-Level Manager Class for this Claim for Relief is from October 17, 1999 to the date of judgment in this action.

197. FedEx Express has engaged in a pattern and practice of intentional discrimination against Plaintiffs and the classes with respect to initial assignments (as to the Minority Employee Class only), promotion, compensation, and discipline.

198. The foregoing conduct constitutes illegal intentional discrimination with respect to the making, performance, modification, and termination of contracts prohibited by 42 U.S.C. § 1981.

199. Plaintiffs request relief as provided in the Prayer for Relief below.

FOURTH CLAIM FOR RELIEF
VIOLATION OF 42 U.S.C. § 1981—NON-CLASS CLAIMS

200. Plaintiffs incorporate the allegations of paragraphs 1 through 199, above, as though fully set forth herein.

201. This claim is brought on behalf of the named Plaintiffs individually for their non-class claims.

202. Defendant intentionally discriminated against named Plaintiffs Brown, Gonzales, Merritt, Smith, Stevenson, Satchell, and Boykin on the basis of their race.

203. Defendant intentionally discriminated against Plaintiff Brown by subjecting her to more burdensome work conditions than similarly situated non-Minority employees, subjecting her to harassment, and retaliating against her for filing a discrimination complaint.

204. Defendant intentionally discriminated against Plaintiff Gonzales by failing to rehire him from disability.

205. Defendant intentionally discriminated against Plaintiff Merritt by singling

1 him out for discipline and by denying him leave without pay.

2 206. Defendant intentionally discriminated against Plaintiff Smith by retaliating
3 against him for filing a discrimination complaint and terminating him.

4 207. Defendant intentionally discriminated against Plaintiff Stevenson by
5 subjecting him to harassment.

6 208. Defendant intentionally discriminated against Plaintiff Satchell by
7 retaliating against him for filing a discrimination complaint and terminating him.

8 209. Defendant intentionally discriminated against Plaintiff Boykin by
9 subjecting her to more burdensome work conditions than similarly situated non-Minority
10 employees.

11 210. Defendant's discriminatory and retaliatory practices have resulted in the
12 loss of past and future wages and other job benefits, and have caused Plaintiffs to suffer
13 humiliation, embarrassment and emotional distress.

14 211. Plaintiffs request relief as to both their disparate impact and disparate
15 treatment claims as provided in the Prayer for Relief below.

16

FIFTH CLAIM FOR RELIEF
VIOLATION OF CALIFORNIA FEHA-CLASS CLAIMS

17 212. This claim is brought on behalf of all members of the classes who are or
18 were employed by Defendant in California and/or who reside in California, including all the
19 named Plaintiffs except for Plaintiff Merritt.

213. The class period for the Minority Employee Class for this Claim for Relief
22 is from June 13, 2001 through the date of judgment in this action. The class period for the
23 African American Lower-Level Manager Class for this Claim for Relief is from July 31, 2001
24 through the date of judgment in this action.

25 214. Plaintiffs Satchell, Boykin, Brown, Gonzales, Guerrero, Hutchins, Smith,
26 and Stevenson filed timely charges of discrimination with the California Fair Employment and
27 Housing, received right to sue letters, and timely filed the instant claim. Plaintiffs have therefore
28 exhausted their administrative remedies and fulfilled all conditions precedent to suit.

1 A. **Disparate Impact**
23 215. As to disparate impact, Plaintiffs incorporate by reference the allegations of
4 paragraphs 1 through 31, 33 through 66, 72 through 77, 81 through 87, 91 through 98, 102
5 through 106, 110 through 117, 123 through 128, 132 through 140, 149 through 166, and 172
through 214, above, as though fully set forth herein.6 216. Defendant has maintained a system for making decisions about
7 promotions, assignments (as to the Minority Employee Class), compensation, and discipline
8 which is excessively subjective and which has had a disparate impact on Plaintiffs, the Minority
9 Employee Class, and the African American Lower-Level Manager Class. This system cannot be
10 justified by business necessity, but even if it could be so justified, less discriminatory alternatives
11 exist that could equally serve any alleged necessity. Defendant's policies and practices that have
12 a disparate impact on Plaintiffs and the classes they represent are alleged in paragraph 43 above.13 217. Defendant's discriminatory policies and practices as described above have
14 denied Plaintiffs and the classes they represent promotions, desirable job assignments (as to the
15 Minority Employee Class), and compensation to which they were and are entitled; have caused
16 Plaintiffs and the classes they represent to be disciplined when they should not have been,
17 resulting in the loss of past and future wages and other job benefits; and have caused Plaintiffs
18 and the classes they represent to suffer humiliation, embarrassment and emotional distress.19 B. **Disparate Treatment**
2021 218. As to disparate treatment, Plaintiffs incorporate by reference the allegations
22 of paragraphs 1 through 217, above, as though fully set forth herein.23 219. Defendant has engaged in a pattern and practice of intentional
24 discrimination against Plaintiffs and the classes in promotions, assignments (as to the Minority
Employee Class), compensation, and discipline.25 220. The foregoing conduct by Defendant against the named Plaintiffs and
26 members of the classes residing or employed in California violates Section 12940, *et seq.*, of the
27 California Government Code, known as the Fair Employment and Housing Act ("FEHA").

28 221. As a result of such violations of FEHA, the named Plaintiffs and members

1 of the classes residing or employed in California have suffered the loss of past and future wages
 2 and other job benefits, and have suffered humiliation, embarrassment and emotional distress.

3 222. Plaintiffs request relief as to both their disparate impact and disparate
 4 treatment claims as provided in the Prayer for Relief below.

5

SIXTH CLAIM FOR RELIEF
VIOLATION OF CALIFORNIA FEHA—NON-CLASS CLAIMS

6

7 223. Plaintiffs incorporate paragraphs incorporate by reference the allegations of
 8 paragraphs 1 through 222, above, as though fully set forth herein.

9 224. This claim is brought on behalf of the named Plaintiffs employed and/or
 10 residing in California individually for their non-class claims.

11 225. Defendant intentionally discriminated against named Plaintiffs Brown,
 12 Gonzales, Smith, Stevenson, Satchell, and Boykin on the basis of their race.

13 226. Defendant subjected named Plaintiffs Brown, Gonzales, Smith, Stevenson,
 14 Satchell, and Boykin to a racially hostile work environment.

15 227. Defendant intentionally discriminated against Plaintiff Brown by
 16 subjecting her to more burdensome work conditions than similarly situated non-Minority
 17 employees, subjecting her to harassment, and retaliating against her for filing a discrimination
 18 complaint.

19 228. Defendant intentionally discriminated against Plaintiff Gonzales by failing
 20 to rehire him from disability.

21 229. Defendant intentionally discriminated against Plaintiff Smith by retaliating
 22 against him for filing a discrimination complaint and terminating him.

23 230. Defendant intentionally discriminated against Plaintiff Stevenson by
 24 subjecting him to harassment.

25 231. Defendant intentionally discriminated against Plaintiff Satchell by
 26 retaliating against him for filing a discrimination complaint and terminating him.

27 232. Defendant intentionally discriminated against Plaintiff Boykin by

subjecting her to more burdensome work conditions than similarly situated non-Minority employees.

233. Defendant's discriminatory and retaliatory practices have resulted in the loss of past and future wages and other job benefits, and have caused Plaintiffs to suffer humiliation, embarrassment and emotional distress.

234. Plaintiffs request relief as provided in the Prayer for Relief below.

RELIEF ALLEGATIONS

235. Plaintiffs and the classes they represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs and the classes they represent are now suffering and will continue to suffer irreparable injury from Defendant's discriminatory acts and omissions.

236. The actions on the part of Defendant have caused and continue to cause Plaintiffs and the classes substantial losses in earnings, other compensation, desirable job assignments, promotions, and other employment benefits, in an amount to be determined according to proof.

237. The actions on the part of Defendant have caused Plaintiffs and the classes to suffer humiliation, embarrassment and emotional distress.

238. Defendant acted or failed to act as herein alleged with malice or reckless indifference to the protected rights of Plaintiffs and members of the classes. Plaintiffs and members of the classes are thus entitled to recover punitive damages in an amount to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and the classes, pray for relief as follows:

1. Certification of the case as a class action on behalf of the proposed Plaintiff classes, and designation of Plaintiffs as representatives of the classes and their counsel of record as Class Counsel;

2. Damages and equitable relief for all harm the individual Plaintiffs and the

1 classes have sustained as a result of Defendant's conduct, including back pay, front pay,
 2 compensatory damages for emotional distress, and general and special damages for lost
 3 compensation and job benefits that they would have received but for the discriminatory practices
 4 of Defendant, and punitive damages, according to proof;

5 3. For Plaintiffs' individual, non-class claims, damages and equitable relief
 6 for all harm that Plaintiffs have sustained as a result of Defendant's conduct, including
 7 reinstatement, back pay, front pay, general and specific damages for lost compensation and job
 8 benefits they would have received but for the discriminatory practices of Defendant,
 9 compensatory damages for emotional distress, and punitive damages, according to proof;

10 4. Exemplary and punitive damages in an amount commensurate with
 11 Defendant's ability to pay and to deter future discriminatory conduct;

12 5. A preliminary and permanent injunction against Defendant and its
 13 directors, officers, owners, agents, successors, employees and representatives, and any and all
 14 persons acting in concert with it, from engaging in each of the unlawful practices, policies,
 15 customs and usages set forth herein;

16 6. A declaratory judgment that the practices complained of in this complaint
 17 are unlawful and violate 42 U.S.C. § 2000(e), *et seq.*, Title VII of the Civil Rights Act of 1964;

18 7. A declaratory judgment that the practices complained of in this complaint
 19 are unlawful and violate 42 U.S.C. § 1981;

20 8. A declaratory judgment that the practices complained of in this complaint
 21 are unlawful and violate Section 12940, *et seq.*, of the California Government Code, known as the
 22 Fair Employment and Housing Act;

23 9. An order restoring and/or promoting Plaintiffs and the classes to their
 24 rightful positions;

25 10. An order assigning Plaintiffs and the classes to those jobs they would now
 26 be occupying but for Defendant's discriminatory practices;

27 11. An order adjusting the wage rates and benefits for Plaintiffs and the classes
 28 to that level which Plaintiffs and the classes would be enjoying but for Defendant's

1 discriminatory practices;

2 11. Costs incurred, including reasonable attorneys' fees, to the extent allowable
3 by law;

4 12. Pre-Judgment and Post-Judgment interest, as provided by law; and

5 13. Such other and further legal and equitable relief as this Court deems
6 necessary, just and proper.

7 Dated: October 12, 2005

8 LIEFF, CABRASER, HEIMANN &
9 BERNSTEIN, LLP

10 By: /s/ James M. Finberg
11 James M. Finberg

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50 *Class Counsel and Counsel for the Plaintiffs*

1 discriminatory practices;

2 11. Costs incurred, including reasonable attorneys' fees, to the extent allowable
3 by law;

4 12. Pre-Judgment and Post-Judgment interest, as provided by law; and

5 13. Such other and further legal and equitable relief as this Court deems
6 necessary, just and proper.

7 Dated: October 12, 2005

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9 BERNSTEIN, LLP

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: October 12, 2005

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